UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

SACRAMENTO CONTAINER CORPORATION

and Cases 20-CA-116307
20-RC-111147

TEAMSTERS DISTRICT COUNCIL 2,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, GRAPHIC COMMUNICATIONS
CONFERENCE, LOCAL 388M

Mathew C. Peterson and Marta Novoa,
for the General Counsel.

Mark S. Spring (Carothers Disante & Freudenberger),
for Respondent.

Gena B. Burns (Hayes & Cunningham),
for the Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. This case was tried in Sacramento, California, on August 25-27 and September 4, 2014. On November 4, 2013, Teamsters District Council 2, International Brotherhood of Teamsters, Graphic Communications Conference, Local 388M (the Union) filed the charge in case 20-CA-116307 against Sacramento Container Corporation (Respondent or the Employer). On March 12, 2014, the Union filed the first amended charge in Case 20-CA-116307 against Respondent. On March 28, 2014, the Regional Director for Region 20 of the National Labor Relations Board (the Board) issued a complaint against Respondent. The complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer in which it denied that it had violated the Act.

Pursuant to a Stipulated Election Agreement approved by the Regional Director for Region 20 on August 23, 2013, an election by secret ballot was conducted on September 19 and 20, 2013, in the following unit:

> All full-time and regular part-time Operators, Operator-Banders, Assistant Operators, Assistant Operator-Banders, Forklift Drivers, Floaters, Load Formers, Pallet Yard Workers, Maintenance Mechanics, Maintenance Workers, Mechanic Trainers, Dispatchers, Custodians, and Shipping Utility employees working for the Employer at its McClellan, California facility; excluding all temporary employees, confidential employees,

guards, administrative employees, accounting personnel, and supervisors as defined by the Act.

The tally of ballots served on all the parties at the conclusion of the balloting showed the following results:

Approximate number of eligible voters	111
Number of void ballots	0
Number of votes cast for Petitioner	44
Number of votes case against participating labor organization	66
Number of valid votes counted	110
Number of challenged ballots	5
Number of valid votes counted plus challenged ballots…….....[left blank]	

Thereafter, the Petitioner-Union filed timely objections to the election, a copy of which was served on the Employer by the Region. The Regional Director set for hearing the following objection filed by the Union:

> Pursuant to section 102.69 of the rules and regulations of the National Labor Relations Act, Teamsters District Council 2, Local 388M would like to file objections to the employers conduct in case 20-RC-111147 (Sacramento Container). Specifically during the course of the election process the employer through its management, ownership, and outside agents, repeatedly violated its employees' rights by threatening, harassing and intimidating them, by asking them how they were going to vote, threatening to close or move the plant. Teamsters District Council 2, Local 388M believes these actions poisoned the sterile election environment and the election should be set aside and a new election be scheduled as soon as possible.

On April 1, 2014, the Regional Director issued a report on objections and directed a hearing on the Union's objections to be consolidated with the unfair labor practice hearing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,[1] and having considered the briefs submitted by the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. Jurisdiction

At all times material, Respondent has been a corporation, with an office and place of business in McClellan, California, and has been engaged in the manufacture and nonretail sale of corrugated boxes. Respondent, in conducting its business operations described above, during 12 months prior to the issuance of the complaint, purchased and received goods at its facilities in

[1] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence, or because it was in and of itself incredible and unworthy of belief.

California valued in excess of $50,000 directly from sources outside the State of California. Accordingly, the parties stipulated and I find, Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

The parties stipulated that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Facts

As stated above, Respondent has been engaged in manufacturing corrugated boxes at its plant located in McClellan, California. About February 2013, Respondent learned that two nonemployees had distributed union leaflets at its McClellan facility. Around the same time, Respondent was in the process of acquiring another facility in Kingsburg, California. Respondent hired a labor consulting firm to deal with possible labor issues. The consultant ceased working for Respondent in April.

Thereafter, Respondent issued a memorandum to employees describing its "Union Free" policy. In April, Respondent installed a "suggestion box" for employees to anonymously submit suggestions and comments about working conditions. In May, Joseph Leroy, Respondent's owner, began holding monthly meetings with employees on each shift. Leroy discussed the comments received in the suggestion box. Respondent provided lunch for employees at these meetings.

In June, in response to suggestions received from employees, Respondent granted employees an extra hour of pay for every holiday and paid employees an extra hour of overtime each day. Further, Leroy promised employees a 50-cent-per-hour wage increase if they kept the plant clean for a month. The employees could not keep the plant clean and the raise was never granted. Respondent also implemented a bonus program.

In August 2013, the Union filed a petition with the Board seeking to represent the employees at the McClellan facility. This was Respondent's first notice of the Union's campaign. Respondent hired a labor consultant and began campaigning for the upcoming election.

Employee Long Ta testified that Union talk began at the McClellan facility around April. Ta testified that prior to announcing the suggestion box, Leroy asked employees if they had been part of a union, told them that unions were no good, and that he would be responding to employee suggestions. Ta also testified that 1 week or 2 prior to the election, Leroy asked him how he was going to vote. Ta answered that he was going to vote against the Union.

Employee Chris Macharo testified that the union activity began prior to the implementation of the suggestion box. Macharo testified that at a suggestion box meeting, Leroy asked why employees felt they needed a union.. Leroy stated that employees could just come to him and did not need a union. Machado also testified that Leroy stated that if employees were not happy they could leave. Machado first testified that Leroy asked how he was going to vote, but on cross-examination, Machado backed off this testimony.

Employee Mark Sealy testified that Leroy said he heard rumors of people attempting to get a union going. Leroy talked about the cons of a union and asked for suggestions. Sealy also testified that a week prior to the election, Leroy asked what Sealy thought about the Union.

Former employee Sal Adams testified that prior to the suggestion box meetings, Leroy stated that he had heard that employees were passing out union cards during business hours. Leroy stated that passing out cards during business hours was not allowed. According to Adams, Leroy said that "'no union was going to take over his company and tell him what to do.' Leroy said employees could come to him and did not need a union. Finally, Leroy said that "if employees weren't happy, they could go work for a competitor."

Employee Marquise Jones testified that at meetings prior to the filing of the petition, Leroy said he heard about the union and asked why the employees needed a union. Jones testified that about 1 week before the election, he approached Leroy and stated that he did not believe he was paid enough. According to Jones, Leroy expressed sympathy and said "I can't make promises now because of the legal stuff but I promise you I will fix that". Jones said "You can't make promises" and Leroy responded "yeah." Jones testified that he had two later conversations with Leroy in which Leroy confirmed his promise. Leroy credibly testified that he did not promise Jones a raise. According to Leroy, whom I credit, Jones stated he deserved a raise and Leroy said he would look into it. Leroy went to Jones' manager and learned that Jones did not get a raise because he had a poor performance record. Leroy told the manager to explain to Jones why he had not received a raise.

On August 13, the Union filed its petition with the Board seeking to represent the employees at the McClellan facility. Respondent claims that this was its first notice of union activity. Respondent immediately retained the labor consulting firm of Cruz and Associates. Two consultants, Greg Passant and Luis Camarena from Cruz and Associates worked on the campaign. Passant held meetings with employees and Camarena had conversations with employees on the shop floor. The consultants also trained Respondent's supervisors and managers on the proper behavior during an election campaign.

During the campaign, Respondent's supervisors ranked employees in terms of perceived union support so that Camarena could concentrate on the undecided voters. Passant and Camarena credibly testified that they did not ask any employee about their union sympathies or beliefs.

Leroy credibly testified that he did not learn of the union campaign until the petition was filed. He testified that he did tell employees that he had an open door policy but that he did not say that employees didn't need a union. Leroy denied saying that if employees were not happy they could work elsewhere. Leroy testified that on one occasion when an employee mentioned that he had received better benefits at another employer, Leroy asked why the employee did not work there. Leroy denied questioning any employee about his union sympathies.

III. Conclusions

I generally credit the testimony of current employees Macharro, Sealy, and Ta. However, these employees were not definite or clear about the timing of Leroy's remarks. The testimony of current employees is entitled to certain weight where otherwise credible, because it is unlikely they would testify falsely against their employer as it would be contrary to their pecuniary and other self-interest. *See e.g., Natico, Inc.,*302 NLRB 668, 689 (1991); *Bohemia, Inc.,*266 NLRB 761, 764 fn.13 (1984). I do not credit the testimony of Jones that Leroy promised him a wage increase. Leroy credibly denied doing so and I do not believe Leroy would make such a blatant violation. This seems highly unlikely after being counseled by his labor consultants not to make any threats or promises.

Respondent began its suggestion box in April and began holding meetings in May. This occurred prior to knowledge of the union campaign and was a result of a labor consultant's report in April and an employee suggestion. Respondent had suggestion boxes in the past.. I find no violation in Respondent's installation of the suggestion box and subsequent meetings with employees.

I find that Respondent in June, in response to suggestions received from employees, granted employees an extra hour of pay for every holiday and paid employees an extra hour of overtime each day. Further, Leroy promised employees a 50-cent-per-hour wage increase if they kept the plant clean for a month. The employees could not keep the plant clean and the raise was never granted. Respondent also implemented a bonus program. I find these changes took place prior to any knowledge of union activity.

Section 8(a)(1) prohibits employers from threatening employees with job loss if they support a union, whether expressly or implicitly. *Jupiter Medical Center Pavillion,* 346 NLRB 650 (2006). The Board must take "into account the economic dependence of employees on their employer with special awareness of an employee's attentiveness to the intended implication of his employer's statements which might be more readily dismissed by a disinterested party." *Yoshi's Japanese Restaurant,* 330 NLRB 1319, 1341 (2006).

I credit the testimony of Adams and Macharro that Leroy stated that if employees were not happy they could go work for a competitor. I therefore, find that Leroy violated Section 8(a)(1) of the Act by his statements.

To assess whether an interrogation is coercive, the Board considers such factors as whether proper assurances were given during the questioning, the background and timing of the interrogation, the nature of the information sought, the identity the questioner, the place and method of the interrogation, and the truthfulness of the reply. *Metro One Loss Prevention Services,* 356 NLRB No. 20 (2010); *Stabilus, Inc.,* 355 NLRB 836, 850 (2010).

In this case, employees Ta, Sealy, and Macharro each testified that Respondent's owner, Leroy questioned them about their union sympathies and how they would vote. The questioning was by Respondent's highest official, without proper assurances and sought to discover the employees' union sympathies. Under these circumstances, I find the interrogations violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by interrogating employees concerning their union sympathies.

4. Respondent violated Section 8(a)(1) of the Act by impliedly threatening employees with loss of employment for supporting the Union.

5. Respondent did not otherwise violate the Act as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended.[2]

ORDER

Respondent, Sacramento Container Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union sympathies.

(b) Threatening or impliedly threatening employees with loss of employment for supporting the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in McClellan, California, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 2013.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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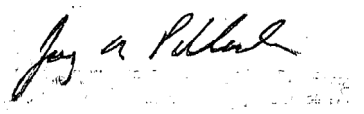
[2] All motions inconsistent with this recommended Order are hereby denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

RECOMMENDATION CONCERNING OBJECTIONS TO THE ELECTION; CASE 20-RC-111147

Based on the foregoing findings concerning the objections to the election filed by the Union, I recommend sustaining the objections filed by the Petitioner-Union. Additionally, I recommend that the September 19 and 20, 2013 election be set aside and a second election be held at a time to be determined by the Regional Director.

Dated, Washington, D.C. October 29, 2014



Jay R. Pollack
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated Section 8(a)(1) of the National Labor Relations Act, as amended, and has ordered us to post and abide by this notice

The National Labor Relations Act gives all employees the following rights:

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT interrogate you regarding your union sympathies and beliefs.

WE WILL NOT threaten or impliedly threaten you with loss of employment for supporting a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

Sacramento Container Corporation
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400, San Francisco, CA 94103-1735
(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-116307 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5183